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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re the Marriage of LINDA and
ARMANDO JASSO.

LINDA JASSO,

Respondent,

v.

ARMANDO JASSO,

Appellant.

D052283

(Super. Ct. No. D307738)

APPEAL from a postjudgment order of the Superior Court of San Diego County,
Browder A. Willis III, Judge. Affirmed.

I.

INTRODUCTION

Armando Jasso appeals from an order of the trial court, issued after judgment, in the marital dissolution action between Armando and his ex-wife, Linda.¹

¹ We use the parties' first names for purposes of clarity.

A 1991 judgment based on a marital settlement agreement between the parties stated that the family home was to be sold, and that the proceeds of the sale were to be divided equally between Armando and Linda. The family home was never sold. According to Linda, in 1998, Linda transferred her half interest in the home to Armando in exchange for a payment in the amount of \$200,000.² Armando eventually paid Linda \$180,000. The settlement agreement also required that Armando pay Linda \$100 per month in child support until the time the family home was sold or the parties' only child reached the age of majority. Armando never made any child support payments to Linda.

Linda petitioned the trial court for an order requiring Armando to pay her the remaining \$20,000 owed her for her share of the former family home, as well as \$35,000 in child support arrears. The trial court granted Linda's requests.

Armando challenges the trial court's ruling, contending that the trial court erred in ordering Armando to make these payments to Linda. Armando first argues that because the parties had no written agreement as to the value of the family home, under the terms of the settlement agreement, the court did not have jurisdiction to enforce the parties' agreed-upon price for Linda's interest in the property, and Linda was otherwise unable to state a claim for breach of contract. Armando also argues that the court should have considered Armando's child support arrearage of \$35,000 to have been satisfied by Armando's \$180,000 payment to Linda, as, he maintains, Family Code section 4011

² Armando disputes that he agreed to pay Linda this amount for only her share of the house, contending that the money he agreed to pay her was for both child support arrears *and* her share of the house. The court found that Armando and Linda agreed that Armando would pay Linda \$200,000 for her half interest in the family home.

requires. In the alternative, Armando claims that the court abused its discretion in not considering a portion of the \$180,000 to be child support.

We reject Armando's arguments. Acting within the continuing jurisdiction granted to the court under the parties' settlement agreement, the trial court concluded that Armando still owes Linda \$20,000 for the equalization payment for the family home, and properly concluded that Armando continues to owe Linda \$35,000 in child support arrears. We therefore affirm the order of the trial court.

II.

FACTUAL AND PROCEDURAL BACKGROUND

The court entered a judgment in the parties' dissolution action in 1991. The judgment incorporated the parties' marital settlement agreement.³ The agreement included a provision granting the court continuing jurisdiction over the marital dissolution matter. That provision states, "Husband and Wife agree that the Superior Court for the County of San Diego, State of California, may reserve jurisdiction over this matter in order to assist the parties in carrying out any term provided for herein."

Linda and Armando had one minor child together at the time of the dissolution. The settlement agreement provided that Armando would pay Linda child support in the amount of \$100 per month until the family home was sold, after which the child support payment amount was to increase to \$325 per month. After judgment in the dissolution

³ Armando failed to include a copy of the 1991 judgment in the record on appeal, despite the fact that the issues he raises in his appeal involve consideration of the terms of the settlement agreement between the parties. This court granted Linda's request to augment the record to include the judgment.

action was entered, Armando continued to live in the former family home and briefly listed the residence for sale. Armando took the house off the market within six months of listing it, and made no further attempt to sell the property. The family home was never sold.

Linda moved into the home in June 1998, after she transferred her interest in the property to Armando by grant deed. According to Linda, Armando had agreed to pay her \$200,000 as consideration for her transferring her interest in the property to him.

From June 1998 to October 2005, Linda paid \$500 per month in rent to Armando. After Armando indicated that he was not able to pay the monthly mortgage payment, Linda began paying \$700 per month in rent.

Armando was unable to pay Linda the \$200,000 he owed her until he refinanced the property in late 2005. On December 12, 2005, Armando gave Linda a check for \$180,000.

On May 30, 2007, Linda filed an order to show cause requesting attorney fees, one-half of the rental income from the marital house, child support arrears, and an equalization payment for her portion of the marital house. Linda requested that the court set the arrearages at \$325 per month from a date by which she contends the house should have been sold, which was one year after the house was put on the market. In the alternative, Linda requested that child support arrearages be set at \$325 per month from June 1998, when she relinquished her interest in the property. Linda also sought \$20,000—the balance remaining on a \$200,000 equalization payment that she maintains Armando agreed to pay for her share of the family home.

The trial court heard oral argument on the matter on September 18, 2007. On October 29, 2007, the trial court entered an order disposing of Linda's requests in her order to show cause.⁴ With respect to child support arrears, the court stated:

"The Petitioner stated that the Respondent has never paid child support. [¶] The evidence is uncontroverted as to the issue of child support. The Respondent has failed to pay any support from the date of the MSA to the child's age of maturity. The Petitioner requested the Court to set arrearages at \$325 per month from the day the house should have been sold in accordance with the terms of the MSA. The MSA was not specific in the details regarding the sale, therefore imputing conditions or remedies would be arbitrary and against general contract principles. Simply put, the agreed upon condition that would trigger the automatic upward modification never occurred. The Petitioner failed to seek enforcement of the MSA when she knew the house was taken off the market. She was not receiving child support from the Respondent and failed to seek enforcement of the Order. Knowing the condition to the automatic upward modification was not met, she failed to seek enforcement of that condition. The MSA is plain on its face. The child support did not increase until the house was sold. The house was never sold. Petitioner never sought modification or enforcement therefore the arrearages should be set at \$100 per month from December 1990."

The trial court found that Armando had agreed to pay Linda \$200,000 as consideration for transferring her interest in the family home to Armando. The court also found that Armando had paid Linda only \$180,000 of the \$200,000. With regard to the equalization payment Linda sought, the court found as follows:

"On June 1, 1998, the parties executed a Grant Deed whereby the Petitioner granted to the Respondent 477 Westby Street as his sole and separate property. Respondent was to pay the sum of \$200,000 to the Petitioner. The Respondent tendered a check on December

⁴ Armando does not challenge the sufficiency of the evidence as to any of the trial court's factual findings. We therefore rely on the trial court's findings when relevant to the determination of this appeal.

12, 2005 in the amount of \$180,000. The Petitioner requests the Court order the Respondent to pay the balance of \$20,000 as agreed. There is no evidence before this Court to justify the withholding of the balance owed to the Petitioner. [¶] As such, the Respondent is ordered to pay the balance of the agreed upon \$20,000."

Armando filed a timely notice of appeal on December 27, 2007.

III.

DISCUSSION

On appeal, Armando seeks to reverse the trial court's award of \$20,000 as the balance due from an equalization payment for division of the family home. According to Armando, the trial court did not have the authority to find that any agreement he and Linda might have reached was binding, since the alleged agreement was not in writing.

Armando also seeks to reverse the trial court's finding that he owes Linda past due child support. Armando asserts that he paid Linda all \$35,000 in past due child support when he made the \$180,000 payment to her. Under Armando's theory, the \$180,000 payment was for the \$35,000 in child support arrearages he owed, and the balance was his payment to Linda for her interest in the home, which, he maintains, should be considered a gift to Linda since they had no enforceable agreement as to that money. Although the trial court clearly did not believe Armando's contention that the parties had agreed that \$35,000 of the \$180,000 Armando paid to Linda was in satisfaction of the child support arrears, Armando contends that Family Code section 4011 required that he pay the child support payment before paying any other debts he owed to Linda or to other creditors. Armando maintains that the court was therefore required to consider the

\$180,000 payment to Linda as satisfying his obligation for the past due child support payments first, rather than as an equalization payment for her share of the family home.

A. *The court did not err in concluding that Armando owes Linda \$20,000 as part of an equalization payment*

Armando contends that the settlement agreement, which was incorporated into the dissolution judgment, required that any additional agreements between the parties be in writing in order to be binding, and that because any subsequent agreement between Armando and Linda pertaining to the family home was not in writing, it cannot be binding. Armando maintains that the trial court "lacked jurisdiction to modify the 1991 judgment to make binding those agreements not in writing." He also contends that Linda failed to state a viable cause of action under the 1991 agreement. The relief that Armando seeks on appeal is reversal of the trial court's "\$20,000 award of an equalization payment" to Linda.

Armando relies heavily on the following provision of the settlement agreement to support his claim that the trial court improperly determined that he owes Linda the difference between the \$200,000 that Linda claims they agreed upon, and the \$180,000 he paid: "No other agreement, statement, or promise made by or to either of the parties, shall be binding unless it is in writing and signed by both parties or unless contained in an Order of a court of competent jurisdiction." Armando contends that in ordering him to pay Linda an additional \$20,000 for her share of the family home, the court enforced an unwritten agreement between the parties, which the court did not have the authority to do under the terms of the settlement agreement. Specifically, Armando contends the trial

court's finding that Armando still owes Linda \$20,000 in equalization constitutes a modification of the dissolution judgment, and that the court lacked jurisdiction to "modify" the 1991 judgment after it became final.

We conclude that because the trial court explicitly retained jurisdiction to assist the parties in implementing the terms of the settlement agreement, the court had the authority to order Armando to pay the full amount of the equalization payment to which the court found the parties had agreed. The dissolution agreement anticipated that the house would be sold to a third party. However, because the house was never sold, Linda sought the trial court's assistance in carrying out the provision setting forth how the parties were to divide their joint interest in the family home. The relevant provision in the settlement agreement states: "Both parties to split proceeds equally upon sale of the home at 477 Westby Street, in Chula Vista, CA and the 1968 blue Mustang classic." The trial court possessed jurisdiction to implement the judgment because, as noted above, the settlement agreement provides "that the Superior Court for the County of San Diego, State of California, may reserve jurisdiction over this matter in order to assist the parties in carrying out any term provided for herein." In ordering Armando to pay Linda an additional \$20,000, the trial court was implementing the terms of the dissolution judgment in an equitable manner.

It is undisputed that the family home was never sold to a third party. Instead, Armando maintained possession of the house. The trial court concluded that when Linda transferred her interest in the home to Armando, she essentially "sold" her interest in the home to him for an agreed upon equalization payment of \$200,000. Armando does not

challenge the sufficiency of the evidence to support the trial court's finding that Linda's interest in the house was worth \$200,000. Even if he had raised such a challenge, there is sufficient evidence in this record to support the court's finding. In particular, Linda attested to the fact that the parties agreed that \$200,000 was the value of her interest in the house. The court could reasonably find Linda's testimony on this point to be credible, and rely on the parties' agreement as to the value of the home as evidence of the value of Linda's half interest in the family home.

Since the parties never sold the home to a third party, the trial court reasonably interpreted the settlement agreement to give effect to the intent of the parties in reaching that agreement, which was that the parties would divide equally the value of the family home. The settlement agreement was clearly written to ensure that each party would receive a half interest in the house. Because the terms of that provision could not literally be met without the court forcing Armando to sell the home, it was reasonable for the court to conclude that Linda should receive the value of her half interest in the home in exchange for granting her half interest to Armando. Thus, contrary to Armando's claim that the trial court was necessarily effectuating a separate, unwritten "contract" between the parties, the trial court was relying on the parties' agreement as to the value of the house (or, more precisely, the value of a half interest in the house) in order to effectuate the provision of the settlement agreement that the parties were to split the proceeds from the sale of the home.

In his attempt to prevent the trial court from ordering him to pay Linda an additional \$20,000 as part of the equalization payment for the home, Armando suggests

that the terms of the settlement agreement should be given their most narrow and literal meaning. However, it is apparent that Armando's position is not really that the trial court should strictly interpret the entire settlement agreement, but that it should do so when doing so would benefit Armando. Armando fails to acknowledge that he relies, at least in part, on the trial court not imposing the most strict interpretation of the terms of the settlement agreement; under the most narrow interpretation of the parties' settlement agreement, the trial court could have required Armando to sell the home and split the proceeds from the sale with Linda, without consideration of the \$180,000 payment Armando had already made to Linda, since any agreement concerning the \$180,000 payment was not in writing.⁵

In response to Linda's request that the court assist her in implementing the terms of the settlement agreement, the trial court could have refused to award Linda the additional \$20,000 that she requested, and instead, could have forced the parties to perform under the terms of the settlement agreement. Since Armando is not seeking this remedy, we can infer that he would have been unhappy with that result, which could have benefited Linda to Armando's detriment. Instead, Armando would like the court to interpret the agreement in a manner that would leave him with full ownership of the property, while not having to pay Linda any more than the \$180,000 he has already paid her.

⁵ Even though the settlement agreement did not have a time limit for the sale of the house, the trial court could have read into the agreement the existence of a reasonable time limit for the performance of the act. (See Civil Code, § 1657 ["If no time is specified for the performance of an act required to be performed, a reasonable time is allowed"].)

We raise this point only to demonstrate that Armando's claim that the court should not have given any effect to the parties' oral agreement with regard to the value of Linda's interest in the house could place Armando in a worse position than the one in which he currently finds himself. Clearly, at the time the parties entered into the settlement agreement, they did not anticipate that they might not fulfill the terms of that agreement as originally contemplated. However, the parties did ensure that the court retained jurisdiction to "assist" them in carrying out the terms of the agreement. These parties required assistance in effectuating the terms of their settlement agreement. The court acted appropriately in helping them to reach the intended result of that agreement with respect to the family home, i.e., that the parties would evenly divide the value of that asset. The trial court did not err in ordering Armando to pay in full the equalization payment due to Linda.

B. *The trial court did not err in finding that Armando owes Linda \$35,000 in child support arrears*

The trial court found that Armando owes Linda \$35,000 in child support arrearages. Armando challenges the court's determination, arguing that Family Code section 4011 required that he pay child support before paying any other debts owed to Linda or to other creditors, and that the court thus should have interpreted his \$180,000 payment to Linda as applying first to the past due child support payments, and only the remaining balance to an equalization payment. Armando further asserts that Family Code section 4011 is "jurisdictional," in that it requires trial courts to rule that a party's

payment is always child support first, regardless of the various obligations that party owes to the person who is owed child support.

Family Code section 4011 provides: "Payment of child support ordered by the court shall be made by the person owing the support payment before payment of any debts owed to creditors." By its terms, this provision applies to the conduct of a child support debtor, imposing an obligation on the debtor to first satisfy a child support debt before satisfying other debts. The provision does not impose on a trial court a duty to characterize a payment by a debtor to a creditor as a child support payment when the evidence demonstrates that the payment was not child support. This is particularly true when, as here, the evidence demonstrates that the "payment" is actually an equalization payment made to the party's ex-spouse as part of the equal division of community assets.

The trial court clearly believed Linda's testimony that she and Armando agreed that she would exchange her interest in the family home for a payment of \$200,000 from Armando, of which Armando paid \$180,000. The court found that the \$180,000 was a portion of the value of Linda's half interest in the community property, and thus, that it was an equalization payment. Armando has offered no authority to suggest that the provisions of Family Code section 4011 apply to a trial court's determination concerning the character of a payment made by one party in a dissolution action to the other party,

and there is simply no good reason to interpret this section to limit the court's ability to make findings that correspond with the evidence before it.⁶

In a similar vein, Armando suggests that by concluding that the \$180,000 payment was an equalization payment and that none of it was for child support arrearages, the trial court abused its discretion in that the court "*created* Armando's inability to pay his child support arrearage in full." We disagree with Armando's analysis. The trial court found that Armando agreed to pay Linda \$200,000 in exchange for her interest in the property, not to satisfy his remaining child support obligation. The court rejected the evidence Armando offered to attempt to demonstrate that the parties agreed that the \$180,000 payment was payment in full for both the value of Linda's interest in the property and the \$35,000 in child support arrears. Armando does not challenge the sufficiency of the evidence to support the court's finding that Armando agreed to pay Linda \$200,000 as an equalization payment—and not as child support. The finding thus stands on appeal.

Armando's inability to pay the child support arrears at this point in time is not the result of the trial court's ruling, but, rather, is the result of Armando decision not to pay

⁶ Even if we were to agree with Armando that the trial court should have applied some of the \$180,000 payment to satisfy Armando's child support arrearages, Armando would nevertheless be required to make up for that \$35,000 if it had been subtracted from the \$180,000 payment. Thus, he would still owe Linda \$35,000, plus \$20,000 for the equalization payment, or \$55,000. That is effectively what Armando owes Linda under the trial court's order. As Linda points out, it is possible that Armando wishes to avoid the result the trial court reached because the penalties for not paying child support arrears may be greater than those for not making an equalization payment. If this is the reason underlying Armando's attempt to recharacterize the amounts he owes to Linda, he has made no showing that the trial court erred in characterizing his debts in the way that it did, in light of the evidence presented to the court.

the child support over the years that it was owed, as well as his failure to convince the trial court by adequate proof that he and Linda agreed that the \$180,000 he paid to Linda was intended, in part, to fulfill his overdue child support obligation. Consequently, Armando's assertion that the trial court somehow abused its discretion in finding that he made a \$180,000 equalization payment, rather than a payment of \$180,000 to satisfy both his child support arrears and to give Linda the value of her share of the family home, is without merit.⁷

IV.

DISPOSITION

The postjudgment order of the trial court is affirmed.

AARON, J.

WE CONCUR:

BENKE, Acting P. J.

McDONALD, J.

⁷ Armando also asserts that the fact that his daughter had already reached the age of majority by the time the "arrearage dispute ripened into litigation" does not mean that "Family Code Section 4011 has any less force or effect." While we generally agree with this proposition, since we have determined that section 4011 does not require the court to find that Armando's \$180,000 payment must be credited toward child support arrears, this argument is irrelevant.